

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

EDWARD A. BILISKI,
Plaintiff,

V.

RED CLAY CONSOLIDATED SCHOOL DISTRICT BOARD OF EDUCATION; IRWIN J. BECNEL, JR, CHARLES CAVANAUGH, GARY LINARDUCCI, JAMES J. BUCKLEY, MARGUERITE VAVALA, YVONNE JOHNSON, MARTIN A. WILSON, SR., individually and in their official capacities as members of the Red Clay Consolidated School District Board of Education; ROBERT J. ANDRZEJEWSKI, individually and in his official capacity as Superintendent of the Red Clay Consolidated School District; and RED CLAY CONSOLIDATED SCHOOL DISTRICT, Defendants.

• • • • •

Civil Action No. _____

TRIAL BY JURY IS DEMANDED

COMPLAINT

JURISDICTION AND VENUE

1. The claims set forth herein arise and are instituted pursuant to 42 U.S.C. §1983 to redress the deprivation by the defendants, acting under color of state law, of a right, privilege and immunity secured to the plaintiff by the Fourteenth Amendment to the Constitution of the United States.

2. This Court has original jurisdiction pursuant to 28 U.S.C. §1331 and §1343(3) and 42 U.S.C. §1983. Declaratory relief is sought under 28 U.S.C. §2201 and 2202.

3. The acts alleged herein were committed within the State of Delaware.

THE PARTIES

4. The Plaintiff, Edward A. Biliski (“Biliski”), is a male citizen of the United States and resides in New Castle County, State of Delaware. Biliski was formerly employed as a computer technician by the defendant Red Clay Consolidated School District Board of Education (“Board”).

5. The defendant Board is a “school board” as defined in 14 *Del.C.* §1041(1) organized and existing under the laws of the State of Delaware, 14 *Del.C.* §1041, *et seq.*

6. Defendants Irwin J. Becnel, Jr., Charles Cavanaugh, Gary Linarducci, Martin A. Wilson,

Sr., Marguerite Vavalla, James J. Buckley, and Yvonne Johnson constitute the individual membership of the Defendant Board.

7. Defendant Robert J. Andrzejewski (hereinafter “Superintendent”) is the duly appointed Superintendent of the defendant Red Clay Consolidated School District.

8. Defendant Red Clay Consolidated School District (“District”) is a “reorganized school district” as defined in 14 *Del.C.* §1041(1) organized and existing under the laws of the State of Delaware, 14 *Del.C.* §1041, *et seq.*

9. At all times referred to herein, the defendants were acting within the scope of their employment and/or were exercising powers conferred on them under color of the laws of the State of Delaware.

FACTS COMMON TO ALL COUNTS

10. On or about March 20, 2001, the plaintiff was hired by the defendants Board/District as a computer technician. Plaintiff’s employment with the Board/District continued from March 20, 2001 through August 8, 2006. On August 8, 2006, plaintiff was called off his work assignment and directed to go to the District’s human resources office. When plaintiff arrived at the office, he met with his immediate supervisor, Ted Ammann (“Ammann”) and Debra Davenport (“Davenport”), the District’s Manager of Human Resources.

11. At this meeting, plaintiff was given a series of three Memos. Each Memo was from Ammann and was dated August 7, 2006. Copies of these Memos are attached to this Complaint as Exhibit 1, Exhibit 2, and Exhibit 3, respectively. The Memos contained allegations relating to plaintiff’s job performance. At the conclusion of the meeting, plaintiff was handed a letter from Davenport dated August 8, 2006. A copy of this letter is attached to this Complaint as Exhibit 4. The letter stated:

This letter is a followup to the meeting held today with me and Mr. Ammann. Due to poor work performance, your name will be submitted to the Board of Education for termination. If approved your date of termination will be effective August 11, 2006.

12. Prior to his attending the meeting with Ammann and Davenport on August 8, 2006, plaintiff had no notice that the defendants District/Board intended to terminate his employment and

had no notice as to the reasons for his termination which might have enabled plaintiff to present his case to any decisionmaker prior to his termination.

13. After August 8, 2006 and continuing up to the present time, the plaintiff was not provided with any notice or opportunity to contest the merits of the termination decision with anyone, including the defendants Superintendent, District, or members of the Board.

Claims Arising Under 42 U.S.C. §1983

14. Plaintiff realleges Paragraphs 1 through 13 above as if here fully set forth.

15. By virtue of his employment by the Board/District from March 20, 2001 through August 8, 2006, the plaintiff had an expectation of continued employment with the Board/District.

16. The aforesaid expectation of continued employment amounts to a property interest which exists under the laws of the State of Delaware and is subject to the protections afforded by the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

17. The actions of the defendants as set forth in Paragraphs 1 through 13 above amounted to a deprivation of the plaintiff's property right to continued employment in violation of the plaintiff's right to procedural due process under the Fourteenth Amendment to the Constitution of the United States which is actionable under 42 U.S.C. §1983. Specifically:

(1) the defendants failed to provide the plaintiff with any notice or meaningful opportunity to be heard by any decisionmaker prior to his termination on August 8, 2006;

(2) the defendants failed to provide the plaintiff with any notice or meaningful opportunity to be heard by any decisionmaker after his termination on August 8, 2006.

18. The acts as described above by defendants Board and District, its agents and employees, were practiced either intentionally or with reckless indifference to the federally protected rights of the plaintiff.

19. As a direct and proximate result of the unlawful conduct of defendants, its agents and employees, plaintiff has been injured and has suffered a loss of income, including back pay and benefits and future earnings and fringe benefits.

WHEREFORE, the plaintiff requests that the Court grant relief as follows:

(a) enter a declaratory judgment that the acts and practices complained of herein were unlawful and violative of the Fourteenth Amendment to the Constitution of the United States and 42 U.S.C. §1983;

(b) issue a preliminary and permanent injunction to restore the plaintiff to his former employment and to enjoin the defendants from terminating plaintiff's employment unless the termination procedures employed by the defendants comply with the minimum requirements of procedural due process under the Fourteenth Amendment.

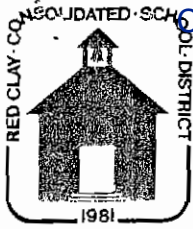
(c) order the defendants, individually, and jointly and severally, to make whole the plaintiff, who has been adversely affected by the violation of constitutional rights described herein, by awarding appropriate monetary damages, including but not limited to backpay, future earnings and fringe benefits, and compensation for all other injuries and losses proximately caused by the unlawful acts of the defendants;

(d) award plaintiff the costs of the action and his reasonable attorney's fees.

(e) grant such other and further relief as the court deems necessary and proper.

/s/ Joseph M. Bernstein
JOSEPH M. BERNSTEIN (#780)
800 N. King Street - Suite 302
Wilmington, DE 19801
302-656-9850
302-656-9836 (Fax)
E-mail: jmbern001@comcast.net
Attorney for Plaintiff

Dated: November 30, 2006



**RED CLAY CONSOLIDATED
SCHOOL DISTRICT**

Robert J. Andrzejewski, Ed.D.
Superintendent

Administrative Offices
2916 Duncan Road
Wilmington, DE 19808

**Department of
Information Technology**
Henry C. Conrad
Middle School
205 Jackson Avenue
Wilmington, Delaware, 19804

(302) 892-4721
FAX (302) 892-2247

Ted Ammann
Manager of Technology
Ted.Ammann@redclay.k12.de.us

Help Desk
(302) 636-HELP

Memo

To: Ed Biliski
From: Ted Ammann
CC: Debra Davenport
Date: August 7, 2006
Re: Unaccounted for time

On August 1st, we met to discuss an issue regarding a deadline that you had missed. You were then asked to sign a memo that summarized our discussion. When you were given the memo, your behavior was inappropriate for a public office space. You were then unaccounted for during the rest of the day. The next morning, you again left and were unaccounted for until approximately 9AM.

You, as well as other full time techs, have been told to email Cara when you are going to be leaving the building. You have not been doing this.

It is even more important that you inform us if you are going to be leaving for non-tech. related issues so that we know you are not available. You are more than welcome to discuss any issues that you have with appropriate district personnel. However, it is incumbent upon you to notify Cara or myself when you are going to be away from your tech. responsibilities.

At this busy time of year, you were away from tech. responsibilities for over 2 hours with no evidence that you have met with any appropriate district personnel.

Cursing or disparaging remarks about supervisors in public places will not be tolerated and future instances will lead to discipline up to and including termination.

I have received, but do not necessarily agree with the content of this memo.



**RED CLAY CONSOLIDATED
SCHOOL DISTRICT**

Robert J. Andrzejewski, Ed.D.
Superintendent

Administrative Offices
2916 Duncan Road
Wilmington, DE 19808

**Department of
Information Technology**
Henry C. Conrad
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205 Jackson Avenue
Wilmington, Delaware, 19804

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FAX (302) 892-2247

Ted Ammann
Manager of Technology
Ted.Ammann@redclay.k12.de.us

Help Desk
(302) 636-HELP

Memo

To: Ed Biliski
From: Ted Ammann
CC: Debra Davenport
Date: August 7, 2006
Re: Refusal to carryout assigned duties

On August 1st, some technicians brought back a van of equipment that needed to be unloaded to our offices. The van was backed up to the door as to quickly empty the van, Barb asked everyone in the building to assist with the unloading. As she came to you, your response was, "No, I'm not doing it. I've been in the schools and it's hot."

Moving technology equipment is a job responsibility of Red Clay technicians and as such you were refusing to complete your responsibilities. It also meant more work for colleagues who were willing to complete the task assigned.

Failure to complete assigned tasks can not be tolerated and continued refusal will lead to disciplinary action up to and including termination.

I have received, but do not necessarily agree with the content of this memo.



**RED CLAY CONSOLIDATED
SCHOOL DISTRICT**

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Superintendent

Administrative Offices
2916 Duncan Road
Wilmington, DE 19808

**Department of
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Manager of Technology
Ted.Ammann@redclay.k12.de.us

Help Desk
(302) 636-HELP

Memo

To: Ed Biliski
From: Ted Ammann
CC: Debra Davenport
Date: August 7, 2006
Re: Disregard for instructions

As you know, there has been extensive construction going on in the back parking lot of Conrad. In preparation for this week's construction, we were asked to park in the front of the building. At my request, Rhonda shared this with the team last week. On August 1st, I sent a follow up reminder letting people know that parking needed to be in the front of the building. On August 2nd, you parked in the fire lane behind the building.

In addition to being a safety hazard, parking here showed a disregard for instructions you had been given. This will not be tolerated. Future disregard for instructions or any other similar behavior will lead to disciplinary action up to and including termination.

I have received, but do not necessarily agree with the content of this memo



**RED CLAY CONSOLIDATED
SCHOOL DISTRICT**

Robert J. Andrzejewski, Ed.D.
Superintendent

Administrative Offices
2916 Duncan Road
Wilmington, DE 19808

Human Resources

(302) 683-6656
FAX (302) 636-8778

Debra Davenport
Manager

Debra.Davenport@redday.k12.de.us

August 8, 2006

Mr. Edward Biliski
106 Hunn Road
Manor Park
New Castle, DE 19730

Dear Mr. Biliski,

This letter is a follow-up to the meeting held today with me and Mr. Ammann. Due to poor work performance your name will be submitted to the Board of Education for termination. If approved your date of termination will be effective August 11, 2006.

Sincerely,

A handwritten signature in cursive script, appearing to read "Debra Davenport".

Debra Davenport
Manager, Human Resources

cc: Ted Ammann
Mary Norris
Diane Dunmon
HR/Payroll

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM)

I (a) PLAINTIFFS**Edward A. Biliski****DEFENDANTS****Red Clay Consolidated School
District Board of Education,
et al.****(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF** New Cast
(EXCEPT IN U.S. PLAINTIFF CASES)COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**Joseph M. Bernstein
800 N. King Street - Suite 302
Wilmington, DE 19801
302-656-9850**

ATTORNEYS (IF KNOWN)

II. BASIS OF JURISDICTION

(PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| | PTF | DEF | | PTF | DEF |
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION

NOTE: THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY: Plaintiff was terminated from his employment in violation of his rights to procedural due process under the 14th Amendment to U.S. constitution and 42 U.S.C. §1983

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Motor Act <input type="checkbox"/> 140 Negotiable Instruments <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medical's Act <input type="checkbox"/> 152 Recovery of Delinquent Student Loans (East Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 154 Shipcharters/Boats <input type="checkbox"/> 155 Other Contract <input type="checkbox"/> 156 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Assault <input type="checkbox"/> 315 Assault Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Motor Vehicle <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Adversely Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fictitious <input type="checkbox"/> 371 Tort in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 410 Agriculture <input type="checkbox"/> 420 Other Food & Drug <input type="checkbox"/> 425 Drug Patent Suits of Property 21 USC 851 <input type="checkbox"/> 430 Liquor Liens <input type="checkbox"/> 440 R.R. & Truck <input type="checkbox"/> 445 Airline Rags <input type="checkbox"/> 450 Occupational Safety/Health <input type="checkbox"/> 455 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 750 Other Labor Legislation <input type="checkbox"/> 760 Exec. Reg. Inc. Security Act	<input type="checkbox"/> 422 Appeal <input type="checkbox"/> 425 USBC 150 <input type="checkbox"/> 425 USBC 157 PROPERTY RIGHTS <input type="checkbox"/> 425 Copyrights <input type="checkbox"/> 430 Patent <input type="checkbox"/> 440 Trademark SOCIAL SECURITY <input type="checkbox"/> 801 SSA (13000) <input type="checkbox"/> 802 Black Lung (923) <input type="checkbox"/> 803 DMAC/OWB (405(g)) <input type="checkbox"/> 804 Social Sec. Act <input type="checkbox"/> 805 FICA (408(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7608	<input type="checkbox"/> 480 State Reapportionment <input type="checkbox"/> 410 Arbitration <input type="checkbox"/> 420 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rules/etc. <input type="checkbox"/> 460 Deposition <input type="checkbox"/> 470 Represser Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 876 Customer Challenge 12 USC 3610 <input type="checkbox"/> 881 Agricultural Act <input type="checkbox"/> 882 Economic Stabilization Act <input type="checkbox"/> 883 Environmental Matters <input type="checkbox"/> 884 Energy Allocation Act <input type="checkbox"/> 885 Freedom of Information Act <input type="checkbox"/> 886 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 888 Constitutionality of State Statutes <input type="checkbox"/> 889 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 250 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Matters to Vacate Sentence <input type="checkbox"/> 515 Habeas Corpus <input type="checkbox"/> 520 General <input type="checkbox"/> 525 Death Penalty <input type="checkbox"/> 540 Miscellaneous & Other <input type="checkbox"/> 550 Other			

VI. ORIGIN

(PLACE AN X IN ONE BOX ONLY)

Transferred from another district (specify)

Appeal to District
7 Judge from Magistrate Judgment☒ 1 Original Proceeding☐ 2 Removed from State Court☐ 3 Remanded from Appellate Court☐ 4 Remanded or Respected☐ 5 another district (specify)☐ 6 Multidistrict Litigation**VII. REQUESTED IN COMPLAINT:**CHECK IF THIS IS A CLASS ACTION
☐ UNDER F.R.C.P. 23**DEMAND \$**

Check YES only if demanded in complaint

JURY DEMAND: ☒ YES ☐ NO**VIII. RELATED CASE(S) IF ANY** (See instructions)

JUDGE

DOCKET NUMBER

DATE **November 30, 2006**

SIGNATURE OF ATTORNEY OF RECORD

Joseph M. Bernstein

AO FORM 85 RECEIPT (REV. 9/04)

United States District Court for the District of Delaware

Civil Action No. 06-740

ACKNOWLEDGMENT
OF RECEIPT FOR AO FORM 85

NOTICE OF AVAILABILITY OF A
UNITED STATES MAGISTRATE JUDGE
TO EXERCISE JURISDICTION

FILED
U.S. DISTRICT COURT
DISTRICT OF DELAWARE
2006 DEC -5 PM 3:44
RG
Scanned

I HEREBY ACKNOWLEDGE RECEIPT OF 10 COPIES OF AO FORM 85.

DEC 05 2006

(Date forms issued)

Joseph M Bernstein

(Signature of Party or their Representative)

Joseph M Bernstein

(Printed name of Party or their Representative)

Note: Completed receipt will be filed in the Civil Action